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No. 87-352

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**In the Supreme Court of the United States****OCTOBER TERM, 1987**

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**SUN OIL COMPANY,**  
*Petitioner,*

vs.

RICHARD WORTMAN and HAZEL MOORE, Individually  
and as representatives of all producers and royalty owners  
to whom Sun Oil Company has made or should make pay-  
ment of suspended proceeds or royalties pursuant to FPC  
opinions or FERC,  
*Respondents.*

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ON WRIT OF CERTIORARI TO THE SUPREME COURT  
OF THE STATE OF KANSAS

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**REPLY BRIEF FOR PETITIONER**

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GERALD SAWATZKY\*

JIM H. GOERING

TIMOTHY B. MUSTAINE

FOULSTON, SIEFKIN, POWERS  
& EBERHARDT700 Fourth Financial Center  
Wichita, Kansas 67202  
(316) 267-6371

EDWYN R. SHERWOOD

P.O. Box 2880

Dallas, Texas 75221-2880  
(214) 890-5608*Attorneys for Petitioner*

Date: February 17, 1988

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\*Counsel of Record

#### **STATEMENT PURSUANT TO RULE 28.1**

Sun Oil Company's name has been changed to Sun Exploration and Production Company, the parent company of which is Sun Company, Inc. The assets of Sun Exploration and Production Company have been transferred to Sun Energy Partners, L.P., of which Sun Exploration and Production Company is the managing general partner. The non-wholly owned subsidiaries of Sun Exploration and Production Company are Canyon Reef Carriers, Inc., East Texas Salt Water Disposal Company and Van Salt Water Disposal Company. The non-wholly owned subsidiary of Sun Company, Inc., is Suncor, Inc.

## TABLE OF CONTENTS

I. Because Limitations Laws Are Substantive in Nature, the Full Faith and Credit Clause and the Due Process Clause Require Kansas to Apply the Limitations Law of the State Where the Claim Arose and Claimant Resides—	
A. The Artificial Judicial Classification of Limitations Laws As Procedural Is Wrong .....	1
B. The "Outcome-Determinative" Test Reinforces the Classification of Limitations Laws As Substantive for Constitutional Purposes .....	6
C. Whether the Forum State May Constitutionally Apply Its "Discovery Rule" When the Action Is Barred by Limitations in the State Where the Claim Arose Is Not Presented for Decision in This Case .....	10
II. Texas, Oklahoma, and Louisiana Laws Governing Liability for Interest, and the Period of Limitations, Differ From Kansas Laws Applied Below—	
A. The Court Below Did Not Apply the Substantive Interest Laws of Texas, Oklahoma and Louisiana, As Required by Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985) .....	12
B. The Limitations Laws of Texas, Oklahoma and Louisiana Bar Interest Claims Related to Sun's 1976 Payout More Than Three Years Prior to Suit .....	16
Conclusion .....	19

## TABLE OF AUTHORITIES

### Cases

<i>Chase Securities Corp. v. Donaldson</i> , 325 U.S. 304 (1945) .....	7, 10
<i>Ferens v. Deere &amp; Co.</i> , 819 F.2d 423 (1987), certiorari pending, No. 87-477 .....	4, 5
<i>Filtsch v. Johnson</i> , 174 Okl. 132, 50 P.2d 138 (1935) .....	17
<i>Flanagan v. Campbell</i> , 183 Okl. 610, 83 P.2d 865 (1938) .....	17
<i>Goad v. Celotex Corporation</i> , 831 F.2d 508 (4th Cir. 1987), certiorari pending No. 87-1163 .....	9
<i>Home Insurance Co. v. Dick</i> , 281 U.S. 397 (1930) .....	8
<i>Le Roy v. Crowninshield</i> , 15 F.Cas. 362, 2 Mason. 151 (1820) .....	4, 7
<i>M'Elmoyle v. Cohen</i> , 13 Pet. 312 (1839) .....	7, 8, 11
<i>Order of R. Telegraphers v. Railway Exp. Agency</i> , 321 U.S. 342 (1944) .....	10
<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797 (1985) ....	14
<i>Phillips Petroleum Co. v. Stahl Petroleum Co.</i> , 569 S.W.2d 480 (Tex. S.Ct. 1978) .....	17
<i>Shutts v. Phillips Petroleum Co.</i> , 567 P.2d 1292 (1977) .....	15
<i>Shutts v. Phillips Petroleum Co.</i> , 235 Kan. 195, 679 P.2d 1159 (1984) .....	15
<i>Shutts v. Phillips Petroleum Co.</i> , 240 Kan. 764, 732 P.2d 1286 (1987) .....	15
<i>Sun Oil Co. v. Wortman</i> , 474 U.S. 806 (1985) .....	12, 14
<i>T &amp; S Inv. Co. v. Coury</i> , 593 P.2d 503 (Okl. 1979) .....	17
<i>Wells v. Simonds Abrasive Co.</i> , 345 U.S. 514 (1953) .....	2
<i>Wortman v. Sun Oil Co.</i> , 236 Kan. 266, 690 P.2d 385 (1984) .....	15, 16, 17
<i>Wortman v. Sun Oil Co.</i> , 241 Kan. 226, 734 P.2d 1190 (1987) .....	15

### Constitutional Provision

Constitution of the United States, Article IV, Sec. 1 .....	passim
--	--------

### Other Authorities

51 Am.Jur.2d, Limitation of Actions, Sec. 453, p. 914 ..	6
Arthur R. Miller and David Crump, Jurisdiction and Choice of Law in Multistate Class Actions After <i>Phillips Petroleum Co. v. Shutts</i> , 96 Yale L.J. 1 (1986) .....	18
III Blackstone, Commentaries on the Laws of England, 308 (1765-1769) (2 Chitty's Blackstone 246; N.Y. 1832) .....	6
Developments in the Law: Statutes of Limitations, 63 Harv. L.Rev. 1177 (1950) .....	6, 7
Fischer, The Limits of Statutes of Limitation, 16 South- western Univ. L.Rev. 1 (1986) .....	8
Grossman, Statutes of Limitations and the Conflict of Laws: Modern Analysis, 1980 Ariz. St. L.J. 1 .....	3-4, 8
Hay, Full Faith and Credit and Federalism in Choice of Law, 34 Mercer L.Rev. 709 (1983) .....	5, 13
Jackson, Full Faith and Credit—The Lawyers' Clause of the Constitution, 45 Col. L.Rev. 1 (1945) .....	4, 5, 13
Leflar, The New Conflicts-Limitations Act, 35 Mercer L.Rev. 461 (1984) .....	7, 8, 11
Martin, Constitutional Limitations on Choice of Law, 61 Cornell L.Rev. 185 (1976) .....	3, 13
Martin, Statutes of Limitation and Rationality in the Conflict of Laws, 19 Washburn L.J. 405 (1980) .....	4, 8
III Papers of Madison 1449 (1840) .....	5
Peilemeier, Why We Should Worry About Full Faith and Credit to Laws, 60 So. Calif. L.Rev. 1299 (1987) .....	5, 13

Restatement (Second) of Conflict of Laws, Sec. 142 ....	5
Uniform Conflict of Laws—Limitations Act, 12 U.L.A. 50 (1987 Supp.) .....	11
Uniform Statute of Limitations on Foreign Claims Act (1957) .....	11
Weintraub, Commentary on the Conflict of Laws, Sec. 9.2B, p. 517 (2d ed. 1980) .....	4

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**REPLY BRIEF FOR PETITIONER**

- I. **Because Limitations Laws Are Substantive in Nature, the Full Faith and Credit Clause and the Due Process Clause Require Kansas to Apply the Limitations Law of the State Where the Claim Arose and Claimant Resides**
  - A. **The Artificial Judicial Classification of Limitations Laws As Procedural Is Wrong**

The arguments advanced by respondents and *amicus curiae* Wiley Goad rest upon the supposition that limitations statutes are procedural. Their arguments do not consider the reasons that have led scholars and courts to recognize limitations statutes as substantive. Rather, they merely reiterate archaic rationalizations which have no

relation to reality. The result is one fiction flowing from another, i.e., that a state which extinguishes all right to sue on a claim created by that state, nevertheless "intends" that the claim can be sued on later in any distant state having a longer limitations law.

A corollary to this irrational conclusion is that citizens must "expect" to be governed by laws of the most unexpected, unrelated places; and that litigants are presumed to understand the state's "intent" that, though a claim it created is extinguished in that state, it remains alive in each of the other forty-nine states that has a longer limitations law. In this Alice-in-Wonderland legal world the forum state's application of its own different limitations law to claims arising elsewhere is asserted as reflecting the "freedom" of a "sovereign" state. In reality, however, it is a refusal to respect the freedom and constitutional right of another state to govern the substantive claims there arising.

The same inverted logic requires that a limitations defense, which can only be invoked by the affirmative defense of a litigant for his own repose and security, is mysteriously transformed into a mere "administrative" policy relating to "procedure", which affects the remedy but not the right. And in return for the "freedom" which each state has to disregard another state's laws, each state which also subscribes to these fictions loses the right to have its limitations laws respected elsewhere.

According to *amicus curiae* Goad, a state may free itself from the rules of this game by calling its limitations laws "substantive", thus requiring other states to then apply that state's laws—although *Wells v. Simonds Abrasive Co.*, 345 U.S. 514 (1953), holds to the contrary. Goad's suggestion, that a state may opt into the coverage of the

Full Faith and Credit Clause, only continues the charade. The truth is that there is no discernable difference between the purpose of a "substantive" limitations law, and a "procedural" limitations law. Both have the same basic purpose and operate in the same way. To say that the "substantive" limitation law is a statute of "repose", while the "procedural" limitations law is not, makes no sense. For a state to selectively control whether the federal Constitution does, or does not, apply, by labeling its limitations law "substantive" or "procedural" would only add to the disorder now rampant in this area of constitutional law.

In this case, Sun Oil Company does not, as charged, seek a new interpretation of the Constitution. Rather, we urge the removal of a historical legal aberration which is contrary to the literal words and the plain purpose of the Full Faith and Credit Clause, as intended by the founders and as needed more than ever today. We also suggest that, once limitations laws are correctly classified as substantive, the Due Process Clause applies just as it would to any other substantive law. The correction of this constitutional error will be a breath of fresh air removing abuses, and reducing existing disorder in relations among our States.

*Amicus curiae* Goad seriously errs in stating that contemporary scholars do not urge that a change is "constitutionally mandated". (Brief, p. 4). With few, if any, exceptions scholars urge constitutional clarification to correct recognized deficiencies in the present rule.<sup>1</sup>

1. E.g., Martin, *Constitutional Limitations on Choice of Law*, 61 Cornell L.Rev. 185, 221 (1976); Grossman, *Statutes of Limitations and the Conflict of Laws: Modern Analysis*,

Likewise, respondents err in stating that the existing rule was "well established in the common law before our Constitution was adopted. . ." (Brief, p. 6). The common law rule was not generally known nor was it adopted in the United States until the early part of the nineteenth century. See *Le Roy v. Crowninshield*, 15 F.Cas. 362, 2 Mason. 151 (1820), and cases cited therein. The first treatise on the subject was Justice Story's "Commentaries on the Conflict of Laws", first published in 1834. Jackson, Full Faith and Credit—The Lawyers' Clause of the Constitution, 45 Col. L.Rev. 1, 6 (1945). In 1777 the Articles of Confederation included a full faith and credit requirement applicable to judicial proceedings. In 1787 that clause was broadened in the Constitution itself to apply to all public Acts, Records and judicial Proceedings of each state. During that era the English rule was virtually unknown and was not established in the states. Hence the contention that the English rule must be read into the Full Faith and Credit Clause must fail on this ground alone. It would be—it was—most incongruous that this Clause, intended "to form a more perfect Union" should be cast aside in favor of an English common law doctrine antithetical to this Union.

In any event, a common law rule contrary to the letter and the spirit of a constitutional command must not be read into it, absent strong evidence of such intent

Footnote continued—

1980 Ariz. St. L.J. 1, 48; Weintraub, Commentary on the Conflict of Laws, Sec. 9.2B, p. 517 (2d ed. 1980); Martin, Statutes of Limitation and Rationality in the Conflict of Laws, 19 Washburn L.J. 405, 421 (1980).

See also, *Ferens v. Deere & Co.*, 819 F.2d 423 (1987), certiorari pending, No. 87-477.

on the part of those drafting and ratifying the Constitution. There exists no such evidence.<sup>2</sup>

The growing realization that the common law conflicts-limitations rule is wrong lends urgent impetus to the need to reconsider the holdings of *M'Elmoyle* and *Wells*, since the common law rule controlled what little constitutional analysis those opinions contain. The long failure to re-examine *M'Elmoyle's* acceptance of the common law fiction that limitations laws affect the "remedy" but not the "right", has resulted from the acceptance of a verbal formula which became sanctified as legal dogma. The problems and evils wrought by adherence to this shopworn shibboleth have become more evident in our present era of burgeoning commercial litigation, instant communication and rapid travel. This is why *Ferens v. Deere & Co.*, 819 F.2d 423 (3rd Cir. 1987), refused to countenance this fiction any longer.

Only recently, therefore, has the problem been addressed. Only recently have demands for reform and change been pressed. The realization that limitations laws are indeed substantive has led judges, lawyers and scholars to urge change in every available way, as in the Uniform Conflict of Laws—Limitations Act, and in proposed revisions to Section 142 of Restatement (Second) of Conflict of Laws. Even England in 1984 changed its common law—the law responsible for our present problem—to treat limitations laws as substantive. [Sun's Brief, pp. 27-32, notes 12, 14, 16].

2. Jackson, Full Faith and Credit—The Lawyers' Clause of the Constitution, 45 Col. L.Rev. 1, 3-6 (1945); Hay, Full Faith and Credit and Federalism in Choice of Law, 34 Mercer L.Rev. 709, 710 (1983); Peilemeier, Why We Should Worry About Full Faith and Credit to Laws, 60 So. Calif. L.Rev. 1299, 1302 (1987); III Papers of Madison 1449, 1480-81 (1840).

Once it is determined, however, that limitations laws are primarily substantive, as reason dictates and scholars agree, the solution to the problem merely requires application of our Constitution as written, according to its purpose from the beginning.

**B. The "Outcome-Determinative" Test Reinforces the Classification of Limitations Laws As Substantive for Constitutional Purposes**

The primary purpose of limitations statutes is "undoubtedly one of fairness to the defendant. There comes a time when he ought to be secure in his reasonable expectation that the slate has been wiped clean of ancient obligations, . . ." *Developments in the Law. Statutes of Limitations*, 63 Harv. L.Rev. 1177, 1185 (1950).

This primary purpose of repose is reflected in the fact that limitations is an affirmative defense to be invoked by a defendant for its own benefit. From Blackstone's age to the present, only the litigant could plead the statute of limitations in bar. For example, to a complaint on a promise, defendant could plead that "he made no such promise within six years; which is an effectual bar to the complaint." III Blackstone, *Commentaries on the Laws of England*, 308 (1765-1769) (2 Chitty's Blackstone 246; N.Y. 1832). 51 Am.Jur.2d, *Limitation of Actions*, Sec. 453, p. 914. Justice Story himself observed that the then recent common law conflicts cases had failed to consider the important factor that a limitations defense is "authorized to be made by the debtor and at his option". For this reason as well, he said, a limitations defense should be no different from any other legal defense. He "could perceive no reason why the right to use that defence, good by his own laws, should not travel

with the debtor into every other country." Only because the error of the contrary rule was "too strongly engrafted" did he so rule, against his own reason and judgment. *Le Roy v. Crowninshield*, 15 F.Cas. at 368, 369.

The English conflicts rule, first adopted on this continent years after our Constitution was ratified, was then applied in a constitutional case to negate the Full Faith and Credit Clause, in *M'Elmoyle v. Cohen*, 13 Pet. 312 (1839). The "historical accident" whereby the parochial English rule separated "right" from "remedy", led to the erroneous correlation of "procedure" with "remedy" and the ensuing failure of courts to classify limitations laws as substantive. Leflar, *The New Conflicts-Limitations Act*, 35 Mercer L.Rev. 461, 473 (1984). The technical terminology of common law writs as to forms of action and "remedies" stifled logical analysis. *Developments in the Law: Statutes of Limitations*, 63 Harv. L.Rev. at 1187 (1950). Cases involving limitations conflicts questions, therefore, historically failed to analyze the substantive nature of limitations laws. Rote acceptance of legal dogma became an easy substitute for realistic analysis.

Now that our jurisprudence has long since disenthralled itself of common law technicalities, it can dispense with these "unsatisfactory rationalizations". *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945). With this history behind us, we have a more objective overview of the constitutional problem and its solution. Being free of arbitrary dogma, courts can better analyze the true nature of limitations laws, so as to anchor our Constitution's operation in the bedrock of reality. When so viewed, the substantive nature of the limitations de-

fense as intending to grant repose cannot fairly be disputed. Leflar, *The New Conflicts-Limitations Act*, 35 Mercer L.Rev. 461, 469 (1984); Martin, *Statutes of Limitation and Rationality in the Conflict of Laws*, 19 Washburn L.J., 405, 420 (1980); Fischer, *The Limits of Statutes of Limitation*, 16 Southwestern Univ. L.Rev. 1, 32 (1986).

The injustice inherent in failure to apply the limitations law of another state where the claim arose led to the enactment of "borrowing" statutes by many states, requiring those limitations laws to be applied, in some circumstances, by the forum. But the inconsistency and confusion caused by this "unruly assemblage of statutes and their uncertain interpretation" only added to the problem. Leflar, *The New Conflicts-Limitations Act*, 35 Mercer L.Rev. 461, 463-4. Grossman, *Statutes of Limitations and Conflict of Laws: Modern Analysis*, 1980 Ariz. St. L.J. 1, 14-15. The vacuum left by *M'Elmoyle's* failure to apply the Full Faith and Credit Clause to the substantive limitations issue, led to these ineffective attempts by states to address what should have been a federal constitutional solution.

The irrationality of the common law rule that a right could exist without a remedy, which led to equating remedy with procedure, also led courts to make exceptions concerning "built-in" limitations statutes by calling them "substantive" for conflicts purposes, even though their function as statutes of repose was the same. Leflar, *Id.*, at p. 462.<sup>3</sup>

3. Similarly, contractual limitations provisions, otherwise valid, have no significant substantive difference from limitations statutes. Their operation is merely confined to a given contract. Martin, *Statutes of Limitation and Rationality in the Conflict of Laws*, 19 Washburn L.J. 405, 416-17 (1980), discussing *Home Insurance Co. v. Dick*, 281 U.S. 397 (1930).

Yet respondents and *amicus curiae* Goad ignore these reasons, these purposes, and this history. They assume ipso facto the procedural nature of limitations laws, perpetuating the obvious fiction without rhyme or reason. Then they argue that any procedural law may on occasion be "outcome-determinative", thereby invalidating this test for constitutional purposes even though the law may be substantive. Their argument, of course, entirely by-passes the point made in Sun's brief. Limitations laws are not procedural rules governing how an action may be commenced and maintained, nor determining which of several remedies may be available in granting legal relief. They determine whether a claim can be maintained, or cannot be maintained, when invoked by a litigant. They are for the purpose of "wiping the slate clean", to grant repose to the litigant. They are either a defense to the claim, or they are not. In either instance they are outcome-determinative in barring, or not barring, the action. These are indisputable reasons requiring limitations laws to be classified as substantive.

Yet *amicus curiae* Goad, ignoring these compelling reasons, indulges in more faulty logic. Stripped of pretense, the argument is that a procedural noncompliance may be outcome-determinative in a given case. (Brief, 11-12). If limitations laws are outcome-determinative, it is inferred, they are also procedural. But this false syllogism is bereft of all meaning. On that premise, any substantive law which is outcome-determinative would also be considered to be procedural.

The conclusion in *Goad v. Celotex Corporation*, 831 F.2d 508 (4th Cir. 1987), certiorari pending No. 87-1163, that limitations laws are primarily for efficient "court management" and only incidentally for "repose", is un-

sound. *Goad's* reliance on *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945) is misplaced. *Chase* held that a state could lengthen its own limitations law without violating due process. It described limitations statutes as sparing courts from litigating "stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost." Cited in support of this purpose was *Order of R. Telegraphers v. Railway Exp. Agency*, 321 U.S. 342, 348-49 (1944), which described the limitations statute's "conclusive effects . . . designed to promote justice" by preventing surprises and giving timely notice to litigants. These are plainly purposes of "conclusive" repose for the litigant.

Nowhere in the cases or literature has anyone attempted to show how a court would be adversely affected in its procedure by applying another state's different limitations law. It is the claim of the litigant which is always directly affected. Thus policies affecting the viability of that claim are necessarily substantive in nature. If a state, therefore, has no interest affecting that claim other than adjudicating it in court, the forum state may not constitutionally apply its own different limitations law.

**C. Whether the Forum State May Constitutionally Apply Its "Discovery Rule" When the Action Is Barred by Limitations in the State Where the Claim Arose Is Not Presented for Decision in This Case**

*Amicus curiae* Goad argues that if the Constitution requires forum states to apply limitations laws as being substantive in nature, an exception should be made where the forum state has a "discovery rule", but the state whose substantive law applies does not. This argument

centers on the "unfairness" exception or "escape clause" contained in Section 4 of the Uniform Conflict of Laws—Limitations Act, 12 U.L.A. 50 (1987 Supp.).

The conclusion of the Committee approving the Uniform Act was that limitations laws are substantive and should be so treated in deciding conflict of laws issues. Under Section 2, the limitations law of the state whose substantive law governs is to be applied, whether shorter or longer than the forum state. By a narrow vote, the "unfairness" exception in Section 4 was retained in the Uniform Act. This vague exception would benefit a claimant who could not reasonably have known of his claim before the limitations period had expired in the state where his claim arose, or in certain tolling situations. Leflar, *The New Conflicts-Limitations Act*, 35 Mercer L.Rev. 461, 479-80 (1984).

The Uniform Conflict of Laws—Limitations Act superseded the earlier Uniform Statute of Limitations on Foreign Claims Act (1957). The latter Act would have applied either the limitations law of the place where the claim accrued, or that of the forum, whichever was shorter. This was found to be unsatisfactory, and was not considered a "sound solution to the choice of law problem. . . ." Leflar, *Id.*, at 464-465. But all these laudable efforts aimed at legal reform were but continuing attempts to fill the constitutional void in this area of law created by the old *M'Elmoyle* rule. Hence the history of the Uniform Act confirms the near universal judgment of legal scholars and judges that limitations laws are indeed substantive in nature.

Once we conclude that limitations laws are substantive, the constitutional consequences follow because such

laws significantly affect people's legal rights. What exceptions the Uniform Act may have made are not pertinent to the constitutional issue, unless they address a constitutional concern.

In our federal Union, each state is entitled to enact and apply substantive laws governing events occurring in that state, in any way that is constitutionally valid. It follows that the forum state must, as a general rule, give full faith and credit to the limitations laws of the state whose substantive law is found to be applicable. If those limitations laws are so "unfair" or otherwise defective, as to be unconstitutional under the Due Process Clause or the Equal Protection Clause, the solution is to grant the relief that the Constitution requires in that individual case. The solution is not to apply the law of the forum state in order to avoid a more stringent, but valid, law of another state.

The present case does not involve a "discovery" issue, nor any similar issue of "unfairness". There is no reason now to address or decide the specific question raised by Goad.

## **II. Texas, Oklahoma, and Louisiana Laws Governing Liability for Interest, and the Period of Limitations, Differ From Kansas Laws Applied Below**

### **A. The Court Below Did Not Apply the Substantive Interest Laws of Texas, Oklahoma and Louisiana, As Required by Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985)**

After having been directed by this Court's remand (474 U.S. 806) to apply the applicable laws of other states to class members' claims arising in those states, the Kansas

court has failed to do so. Instead, Kansas has ventured to predict that the other states would adopt the Kansas theory, and has again exported its own peculiar version of interest law. This case, therefore, presents the opportunity to articulate a standard under which courts must heed and apply the Full Faith and Credit constitutional command.

In the past, the Clause has been weakened by questions whether it was self-executing, whether it meant anything other than what Congress might provide by legislation, and whether it applied to a state's common law laid down in judicial decisions, as well as to judgments and public acts. While these questions have been resolved, this legal history combined with deficient "private advocacy" have resulted in lack of clarity and strength in court decisions. Jackson, Full Faith and Credit—The Lawyer's Clause of the Constitution, 45 Col. L.Rev. 1, 7-17, 33-34 (1945). We can only join the calls of Justice Jackson, and of other scholars on this subject, for doctrinal clarification and strengthening of the Full Faith and Credit Clause, to better implement its purpose. Hay, Full Faith and Credit and Federalism in Choice of Law, 34 Mercer L.Rev. 709 (1983); Pielemeier, Why We Should Worry About Full Faith and Credit to Laws, 60 So. Calif. L.Rev. 1299 (1987); Martin, Constitutional Limitations on Choice of Law, 61 Cornell L.Rev. 185 (1976).<sup>4</sup>

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4. Constitution of the United States, Article IV, Sec. 1 contains the proviso that "... Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

That proviso authorized Congress to enact uniform evidentiary methods for proving state laws, thereby preventing the danger that a state's procedural or evidentiary rules might lead to evasion of the Full Faith and Credit Clause. Ironically,

(Continued on following page)

In *Phillips Petroleum Co. v. Shutts*, this Court directed Kansas to apply the laws of Texas, Oklahoma and Louisiana to the class action claims for interest; and remanded this case for that purpose. (474 U.S. 806). Yet Kansas proceeded to ignore the existing laws of those states by predicting that those states would be enlightened enough to adopt the Kansas theory.

It is Sun's position that Kansas must, under our Constitution, apply the existing law of another state as it is found. Kansas is not entitled to change the existing law of another state, under the guise that it is merely construing and applying that law. If Kansas is allowed to disregard the Full Faith and Credit Clause, and Due Process Clause, in that manner, it will remain free for each state to evade the constitutional command with impunity. A brief look at how Kansas exported its own unorthodox theory of interest law proves the need to formulate and enunciate a test requiring constitutional compliance.

Notwithstanding this Court's recognition that "... Texas has never awarded any such interest at a rate greater than 6% ..." (472 U.S. at 817), the Kansas Supreme Court again on remand applied the Kansas theory of interest which adopts the interest rate found in an inapplicable federal regulation, as it had before. Sun's

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Footnote continued—

that proviso led to unwarranted doubts, questioning whether the Clause was self-executing without congressional action; thus weakening the impact of the Clause. The Articles of Confederation in 1777 required full faith and credit to be given to court records and proceedings. In 1787, the Constitutional Clause was enlarged to include a state's other public acts and records, and Congress was given power to prescribe the manner in which such laws should be proved. The purpose was to strengthen the requirement, not to weaken it.

brief demonstrates that the Texas Supreme Court applied the Texas statutory and state constitutional 6% rate in its identical *Stahl* case, with full knowledge of the higher federal rate, and with full knowledge of Kansas' different theory utilizing the federal rate.

Respondents are unable to answer Sun's summary of the Texas judicial record in its royalty interest cases, preferring instead to quote from inapplicable personal injury cases. Respondents then lamely claim that Sun's federally filed FPC undertaking to refund excess gas prices to its pipeline purchasers, with interest, mysteriously became a contract between Sun and its royalty owners (over whom the federal commission exercised no jurisdiction). It is thus contended that Texas would enforce this "contract" to pay a higher rate of interest. But the lower court, at least, recognized that the only basis for recovery in any state was under unjust enrichment "equitable principles," not on a written contract. (*Shutts*, supra, 732 P.2d at 1290, 1294; 679 P.2d at 1175; 567 P.2d at 1319, 1321) (*Wortman*, supra, J.A. 119, 150).

In advocating a new theory of recovery, respondents are merely grasping for non-existent support for the lower court's refusal to follow Texas law. Neither can respondents find support for the lower court's similar export of the Kansas theory to Oklahoma and Louisiana. (Sun Brief, p. 38). The truth is that the Kansas theory, adopting inapplicable federal interest rates as state law, is based entirely on the lower court's notions of "equity." It is an unorthodox theory unsupported by statutes or cases in other states. Whatever its equitable merit, however, each state is entitled to promulgate its own laws. Kansas cannot constitutionally export its theory so as to govern class members' interest claims arising in other states.

**B. The Limitations Laws of Texas, Oklahoma and Louisiana Bar Interest Claims Related to Sun's 1976 Payout More Than Three Years Prior to Suit**

Respondents are also forced to grasp at straws in their argument contending that the limitations laws of Texas and Oklahoma do not bar claims arising in those states. (Respondents concede that Louisiana law bars such claims). They erroneously state that interest, awarded on the basis of unjust enrichment "equitable principles," is instead based upon written contracts requiring interest.

The plaintiff class members were subject to written oil and gas leases requiring Sun to pay a 1/8th royalty on gas sales. But the leases contained no provision, express or implied, for interest. The interest award was based on the equitable doctrine of unjust enrichment, which, until this case, was subject to the three year Kansas limitations statute.

Recognizing this impediment to denying Sun's limitations defense, the Kansas court, sua sponte, developed a new theory of Kansas limitations law avoiding its three year limitations for such equitable actions, based on another common law fiction. (690 P.2d at 391, J.A. 122). In calculating unpaid interest accruing on principal already paid, the so-called "United States Rule" allows the unpaid interest amount as of date of payout, also to draw interest until date of judgment. To avoid the common law rule forbidding compounding of interest (interest on interest), the Rule as stated treats the debtor's payment of principal as being partly for the accrued interest as of that date, so that interest may then continue to accrue on the unpaid "principal" balance.

Despite respondents' petition seeking only interest, and alleging prior payment of principal; and despite a stipulation to that effect in the pretrial order (J.A. 7, 50-51), the Kansas court cited the foregoing fiction as a basis for saying that the suit was for "principal" royalty amounts required to be paid by the written lease. Using this fiction, it applied the Kansas five year statute applicable to written contracts. (*Wortman v. Sun Oil Co.*, 690 P.2d at 391, J.A. 122).

Conceding that Kansas has the constitutional right to use a fictional formula to turn suits for equitable interest into suits for royalty principal long since paid, Kansas has no right to export this medieval magic into the law of other states. Texas does not indulge in the Kansas fiction that interest is principal. *Phillips Petroleum Co. v. Stahl Petroleum Co.*, 569 S.W.2d 480, 488 (Tex. S.Ct. 1978), ruled that interest is properly calculated on interest. It held there was no need to indulge in an irrelevant fiction of this kind, i.e., that interest is principal. In Texas, there is not the slightest pretense for applying a limitations statute applicable to written contracts to the interest claims in this case. Accordingly, the two year Texas limitations statute is applicable. (Sun Brief, p. 7).

Nor could any court, we suppose, rationally hold that Oklahoma would adopt the Kansas theory treating an equitable suit for interest, after the principal debt was paid in full, as a suit for principal owing under a written contract. Oklahoma's three year limitations statute bars the interest claims arising therein, related to Sun's 1976 payout. *Filtsch v. Johnson*, 174 Okl. 132, 50 P.2d 138 (1935) (action for rent); *Flanagan v. Campbell*, 183 Okl. 610, 83 P.2d 865 (1938) (action for royalty oil); *T & S Inv. Co. v. Coury*, 593 P.2d 503 (Okl. 1979) (quasi-contract).

The unorthodox theories adopted by Kansas for its own purposes and for its own reasons, relating to interest liability and limitations laws, are vivid examples of laws created by "magnet states", drawing to themselves nationwide litigation in a given area of law. Arthur R. Miller and David Crump, *Jurisdiction and Choice of Law in Multistate Class Actions After Phillips Petroleum Co. v. Shutts*, 96 Yale L.J. 1 (1986).<sup>5</sup> Unless protected by the Full Faith and Credit Clause and the Due Process Clause, litigants' substantive rights will be determined by the fortuitous laws of states who have no legitimate interest in the disputes. And each state having laws considered favorable for one class or group of citizens will become a litigation haven where local state courts create and apply "national" law. Our Constitution was meant to prevent that result.

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5. Another example is the lower court's construction of the Kansas limitations "borrowing" statute which adopts the shorter limitations act of the state where the cause of action arose. Kansas holds its "borrowing" statute inapplicable in this class action because the "cause of action arose in Kansas as well as in Texas, Oklahoma, Louisiana, New Mexico, and Mississippi." (J.A. 157). Treating many individual claims from many states as one cause of action arising in Kansas vividly demonstrates that state's intent to apply its own law to claims arising elsewhere.

## CONCLUSION

Kansas has again, after prior remand by this Court, avoided applying substantive laws of Texas, Oklahoma and Louisiana to the claims arising in each of those states.<sup>6</sup> In order to insure compliance with the Constitution, it becomes necessary for this Court to examine those laws in laying down a test which each state may use as a guide in enforcing the constitutional command.

In this particular case, another general remand requiring the lower court to consider again the substantive laws of the interested states is not enough. The Kansas court should be directed to enter judgment for Sun as requested in the Conclusion to its Brief.

Respectfully submitted,

GERALD SAWATZKY\*

JIM H. GOERING

TIMOTHY B. MUSTAINE

FOULSTON, SIEFKIN, POWERS  
& EBERHARDT

700 Fourth Financial Center  
Wichita, Kansas 67202  
(316) 267-6371

- and -

EDWYN R. SHERWOOD

P.O. Box 2880  
Dallas, Texas 75221-2880  
(214) 890-5608

*Attorneys for Petitioner*

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\*Counsel of Record

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6. Because the claims arising in Mississippi and New Mexico are *de minimis*, Sun disregards them in this Court.